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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,857

12/30/2003

Randall Cornfield

ICS-handle

6240

7590

01/16/2007

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CANADA

EXAMINER

WILLIAMS, MARK A

ART UNIT

PAPER NUMBER

3676

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/748,857

Applicant(s)

CORNFIELD

Examiner

Mark A. Williams

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/17/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 19 is objected to because of the following informalities: there is a lack of antecedent basis for “said indentation surface nadir” and “said thumb rest area nadir”. Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herron et al., US Design Patent Des, 295,011, in view of Mosley, US Design Patent Des.397,018.

See below figures. Herron provides the general claimed handle including a generally elongated body defining a body longitudinal axis, a body forward end for connection to said implement head and a longitudinally opposed body rearward end; said body also defining a body top surface and a substantially opposed body

bottom surface; said body defining an encirclable section located intermediate said body forward and rearward ends, said encirclable section being configured and sized so as to be graspable between at least a portion of a user's palm and at least a portion of at least either one of the user's middle, ring or small fingers at least partially encircling said encirclable section; said body top surface being provided with an identifiable thumb rest area located intermediate said encirclable section and said body forward end for contacting at least a portion of the distal pulp of said thumb, said thumb rest area defining a rest area forward most location; said body bottom surface being provided with a substantially concave indentation defining an indentation surface located intermediate the encirclable section and said body forward end for contacting at least a portion of one of said finger lateral surfaces of said index finger with the latter in substantially perpendicular relationship with said body longitudinal axis; said indentation surface having a substantially arcuate cross-sectional configuration defining an indentation first end located substantially adjacent said encirclable section and an indentation second end located substantially adjacent to said body forward end; said body defining a cross-sectional first reference plane extending in a substantially perpendicular relationship with said body longitudinal axis and in register with said indentation second end, said indentation surface being configured and sized so that at least a section of said

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indention surface is positioned forwardly relative to said first reference plane. The thumb rest is offset relative to the indention, as claimed. The encirclable section is fusiform. An abutment section and the neck section together defining a thumb rest area on the body top surface, and an index rest area on the body bottom surface; said abutment section tapering forwardly into a spacing section for spacing the fingers from the implement head. The neck section defines a top surface nadir and a bottom surface nadir, as claimed. Top surface and bottom surface peaks as claimed are inherent.

Regarding claims 1-3, 6-14, 16, 18, 19, 26-28, 33, and 35-37, Herron provides the claimed invention except explicit teaching of (1) at least a section of the intention surface being located forwardly to a reference plan intersecting an indention surface end point, as claimed; and (2) the encirclable section having a substantially fusiform configuration, as claimed. Mosley teaches these general concepts in a particular handle design. Such a design creates a particular visual appearance that may be desired. In addition, one skilled in the art would know that the particular indentation shape provides additional shielding to the finger of a user. It would have been obvious to include such modifications in the design of Herron for the purpose of achieving a particular visual appearance of the handle as well as additional shielding means for a users finger during use of the knife.

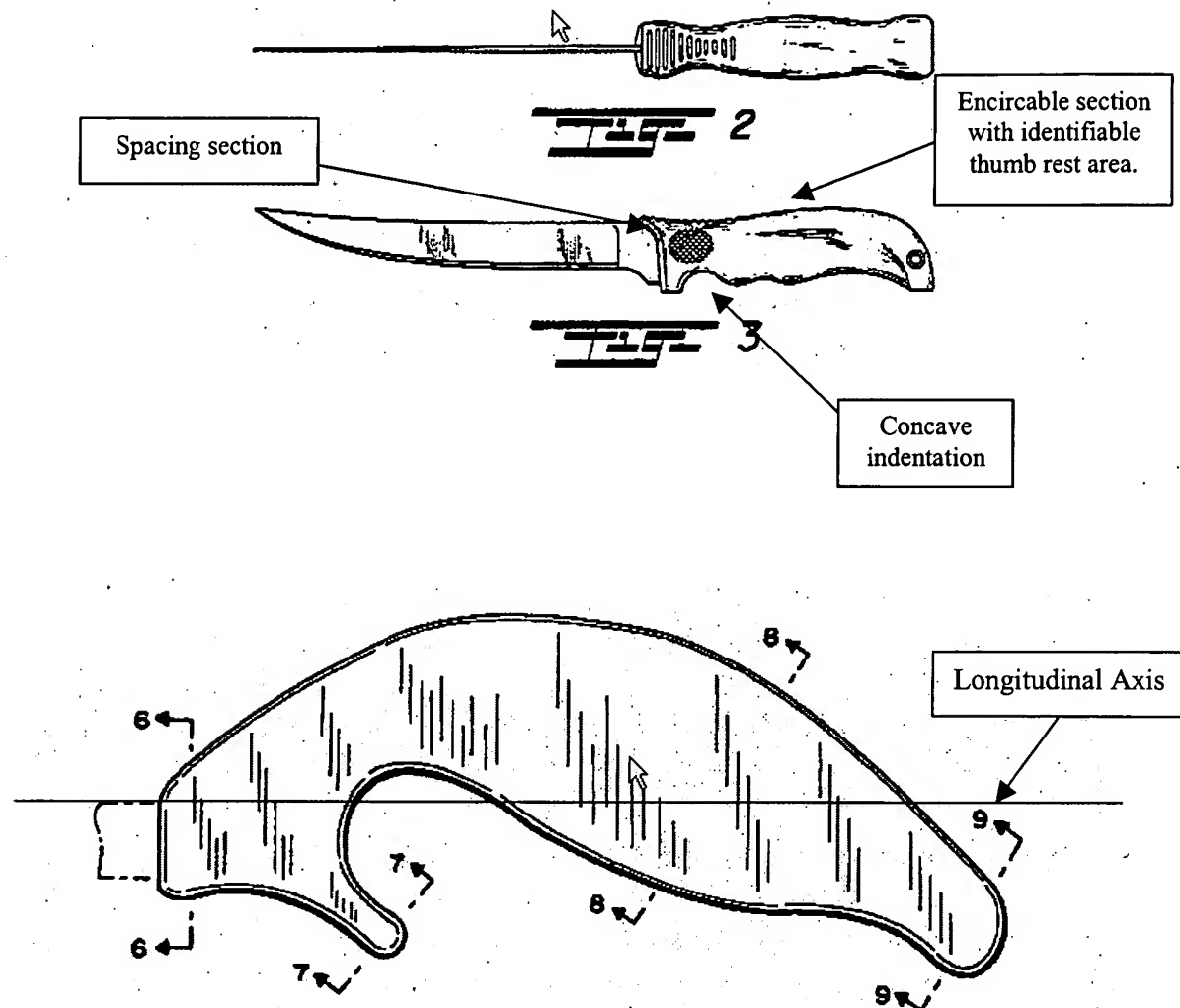
Regarding claim 4, Herron does not explicitly state the claimed values of a reference plane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use such values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Such a modification would have produced no unexpected results, and is not novel.

Regarding claims 17 and 20, top and bottom apexes, as well as indentation surface nadir and thumb rest area nadir, are inherent to the design. However, the particular sum of the distance as claimed is not explicitly disclosed. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device in this way, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Such a modification may help achieve a particular desired gripping feel as well as visual appearance of the handle.

Regarding claims 21-25, 29-31, Herron discloses the claimed invention except for the device being of different materials, as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in this way, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification would have produced no unexpected results, and is not novel. On advantage to such a modification is that such a material would add in the gripping of the device.

Regarding claims 5, 15, 32, and 34, although these particular limitations are not explicitly shown, it would have been an obvious matter of design choice to make the different portions of the device of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Such modifications are not critical to the design and would have produced no unexpected results. One reason for such modification may be for achieving a desire appearance of the handle.



Response to Arguments

3. Applicant's arguments filed 10/17/06 have been fully considered but they are moot in view of new grounds of rejection.
4. Applicant's arguments filed 6/3/05 have been fully considered but they are not persuasive.

Applicant argues that structure directed to the device of US Design Patent 397,018 is not applicable in meeting the claim limitations since the handle is curved. However, as shown in the above figure, a generally longitudinal axis can still be formed. In addition, specific aspects of the device of '018 are obviously combinable with Herron, specifically the fusiform configuration and the indentation shape, as outlined in the above rejection. Such structures are well known in the art of handles.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will

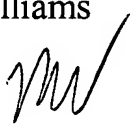
be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams
1/7/07



BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER